

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

BellSouth Petition for Forbearance for
Nonlocal Directory Assistance Service)

CC Docket No. 97-172

BELLSOUTH RESPONSE TO OPPOSITIONS

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby responds to oppositions¹ to BellSouth's Petition for Forbearance ("Petition"), which was filed October 8, 1999,² in the above-captioned proceeding.

In its Petition, BellSouth requested forbearance from the requirements of Section 272 of the Act consistent with the relief recently granted to US West in the *US West Forbearance Order*.³ In that *Order*, the Commission found that forbearance was in the public interest, and thus required under the standards of Section 10, when the forbearance was subject to the condition that US West make available on a nondiscriminatory basis to unaffiliated competing providers of directory assistance services the same in-region listing information that US West uses to provide its nonlocal directory assistance services. In its Petition, BellSouth showed that it would compete in the same nonlocal directory assistance service market as US West and would provide consumers the same competitive service benefits. BellSouth also indicated that it

¹ Only five parties filed comments on BellSouth's Petition: Teltrust, Inc., Excell Agent Services, L.L.C., AT&T Corp., INFONXX, Inc. and MCI WorldCom.

² See also, Supplemental Description of Network Architecture for BellSouth's NDA Service (filed Nov. 8, 1999) ("Supplement").

³ *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of US West Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket Nos. 97-172, 92-105, *Memorandum Opinion and Order*, FCC 99-133 (released Sept. 27, 1999) ("*US West Forbearance Order*").

would agree to the same nondiscrimination obligation with respect to in-region listing information that was applied to US West.⁴ Finally, BellSouth also confirmed in its Supplement that it now owns in their entirety all of the information storage facilities that will be used in BellSouth's nonlocal directory assistance offering. Thus, BellSouth showed that it is entitled to the same forbearance relief granted to US West, subject to the same conditions.⁵

Parties opposing BellSouth's Petition first argue that the Commission should impose sanctions based on circumstances leading up to the need for forbearance. These arguments are beyond the scope of BellSouth's forbearance request and should be rejected.

Opponents also urge the Commission to impose additional conditions or require advance "proof of compliance" with conditions beyond those made a part of the *US West Forbearance Order*. The Commission has already found, however, that provision of nonlocal directory assistance subject to the conditions of the *US West Forbearance Order* meets the public interest test of Section 10. To the extent parties were dissatisfied with those conditions, they should have requested reconsideration of that decision. None did so. Nor have they provided any reason BellSouth should not be granted the same relief as that granted to US West.

⁴ BellSouth noted in its Petition that it understands this condition to attach only to BellSouth's own subscriber listing data and to subscriber data of customers of carriers in BellSouth's region who provide that data directly to BellSouth, but not to data that BellSouth obtains from third parties in the open market. BellSouth Petition at n.19. No commenting party took exception to this interpretation.

⁵ To the extent some parties contend that the *US West Forbearance Order* did not extend to out-of-region nonlocal directory assistance service because US West's offering of that component of its service was not compliant with the Commission's interpretation of Section 271(g)(4) at the time of the *Order*, AT&T at 12-13, Teltrust at 5, BellSouth affirms that its out-of-region nonlocal directory assistance service will be compliant with that interpretation because BellSouth has already purchased and owns the information storage facilities in which out-of-region listings will be housed. Accordingly, the scope of BellSouth's forbearance relief should explicitly include the out-of-region listing component of BellSouth's nonlocal directory assistance service.

Finally, opponents urged the FCC to require advance demonstrations from BellSouth of compliance with applicable nondiscrimination conditions. BellSouth has apprised the Commission of its commitment to compliance with such requirements as a condition of forbearance. No further proof is necessary or required. Accordingly, the oppositions to BellSouth's Petition should be rejected and forbearance should be granted for BellSouth's nonlocal directory assistance service.

I. The Commission Need Not and Should Not Consider Sanctions in This Proceeding.

Several opposing parties contend that the Commission should consider imposing sanctions on BellSouth for alleged violations of Section 271 or 272 of the Act before the Commission addresses BellSouth's forbearance Petition. Consideration of sanctions would be neither appropriate nor necessary in the context of BellSouth's request for prospective relief. Accordingly, requests for such consideration should be rejected.

Parties argue variously that BellSouth should be sanctioned for allegedly violating Section 271 and/or 272 of the Act with respect to its nonlocal directory assistance services as a precondition to the forbearance relief it seeks. Presumably, however, the Commission has already considered and rejected in the context of the *US West Forbearance Order* the notion of tying consideration of sanctions for alleged past activities to consideration of forbearance from Section 272 on a prospective basis for nonlocal directory assistance service. In that *Order*, the Commission concluded that a portion of US West's nonlocal directory assistance service would need to be reconfigured to be made compliant with Section 271(g)(4) and that forbearance from Section 272 was necessary for US West to offer the service going forward on an integrated basis. The Commission then granted the requisite forbearance with no consideration of any potential need for sanctions.

Although BellSouth has agreed to purchase, and in fact has purchased, the information storage facilities that will be used in the nonlocal directory assistance service for which BellSouth seeks forbearance, BellSouth does not concede that such “ownership” is necessary for compliance with Section 271(g)(4). BellSouth thus has agreed to the requirement at this time as a condition of the instant “me-too” request for forbearance, but continues to urge the Commission to revisit its interpretation on this issue.⁶

Opponents also assert that sanctions should be considered because BellSouth failed to file its forbearance petition promptly after the news release of the *US West Forbearance Order*,⁷ and instead waited until the *Order* itself was released. This argument is specious. It is well settled that the Commission acts through its orders, not its news releases.⁸ Until the *Order* was released, BellSouth could not have been aware of the full extent of the Commission’s conclusions or the reasons therefor. Even had BellSouth filed earlier than it did, it likely would have found it necessary to withdraw its filing and to resubmit it consistent with the requirements of the *US West Forbearance Order*.⁹ Moreover, BellSouth filed its Petition as soon as reasonably

⁶ *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, CC Docket No. 97-172, *BellSouth Petition for Limited Reconsideration* (filed October 27, 1999).

⁷ MCI contends that BellSouth should have filed its forbearance petition even earlier, such as after US West filed its request in the underlying declaratory ruling proceeding. MCI at 4. BellSouth elected not to do so, however, as a result of informal discussions with Commission staff who recommended that BellSouth await the outcome of the declaratory ruling proceeding.

⁸ Indeed, the June 9, 1999, news release of the *US West Forbearance Order* itself displays the legend, “This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Circ. 1974).”

⁹ See, e.g., *Petition of SBC Communications Inc. and Its Affiliates Southwestern Bell Telephone Company, Pacific Bell, Nevada Bell, and Southern New England Telephone Company for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of National Directory Assistance Services*, CC Docket No. 97-

practicable, only eleven days after release of the *Order*. BellSouth has also acquired full ownership of the information storage facilities that will be used in the out-of-region portion of the nonlocal directory service that is subject to BellSouth's Petition and is working diligently to populate those storage facilities with the appropriate listing data. Assertions that BellSouth has worked with anything other than all deliberate speed to satisfy the conditions of forbearance under the *US West Forbearance Order* must be flatly rejected.

II. BellSouth's Petition Meets the Forbearance Standard of Section 10 as Applied in the *US West Forbearance Order*.

Arguments addressed to the merits of BellSouth's Petition fare no better than those urging sanctions. BellSouth's Petition meets the forbearance standard of Section 10 as applied in the *US West Forbearance Order*. Requests that the Commission impose additional or more onerous conditions of forbearance for BellSouth should be rejected.

Some of the requests for additional requirements are transparent attempts by existing competitors merely to delay approval of BellSouth's Petition. For example, suggestions that the Commission require another submission of "proof" of satisfaction of the conditions of the *US West Forbearance Order* and that the Commission subject any such submission to another pleading cycle serve no purpose other than to interpose delay. The Commission has already concluded that forbearance for US West's nonlocal directory assistance service, subject to the conditions of the *US West Forbearance Order*, is in the public interest. The Commission should not delay these same public interest benefits to customers of BellSouth by imposing procedural obstacles for BellSouth that were not required in the *US West Forbearance Order*.

172, *Motion for Leave to Withdraw SBC Communications Inc. 's Conditional Petition for Forbearance and Request for Immediate Relief* (filed November 2, 1999).

Also, as fully explained in its Supplement to its original Forbearance Petition, BellSouth has, in fact, acquired full ownership of the information storage facilities that will be used in the out-of-region portion of the nonlocal directory service that is subject to BellSouth's Petition and is working diligently to populate those storage facilities with the appropriate listing data. Thus, both MCI WorldCom and Excell are incorrect in their suggestions to the Commission that BellSouth has not explained or established that the company does in fact now own such storage facilities. These parties' attempts to have the Commission require further demonstration of BellSouth's ownership of its directory assistance listing storage facilities are nothing more than disingenuous tactics designed to delay the decision on BellSouth's forbearance request. Accordingly, they should be rejected.

Indeed, the Commission has not required any "proof" of ownership of the information storage facilities utilized to provide the *in-region* component of nonlocal directory assistance service, and no party has asked it to do so. Those information storage facilities are subject to the very same ownership requirement the Commission has read into Section 271(g)(4) for information storage facilities housing out-of-region listings. BellSouth has confirmed in its Supplement that it wholly owns the information storage facilities that will be used for *both* in-region and out-of-region nonlocal directory assistance. The Commission's direction and guidance in the *US West Forbearance Order* was clear, and BellSouth has taken the appropriate actions to ensure that it, too, complies with the Commission's forbearance conditions as they relate to BellSouth's instant request for forbearance. The Commission should not delay forbearance by subjecting BellSouth's procurement of the out-of-region facilities to a further pleading cycle.

III. BellSouth's Compliance with Nondiscrimination Conditions

Arguments for advance demonstration of compliance with the nondiscrimination conditions are similarly misdirected. Many of these arguments emanate simply from BellSouth's use of future tense in describing its commitment to meet the nondiscrimination condition of forbearance. As the context of BellSouth's usage indicates, BellSouth was simply reflecting its recognition that the conditions of the *US West Forbearance Order* are a *quid pro quo* for forbearance. Conversely, if there is no forbearance, there is no relief to which the conditions attach.¹⁰ Since BellSouth's Petition anticipates future grant of forbearance like that of US West, BellSouth's commitment to comply with the conditions associated with such forbearance was also stated in the future tense.

Oppositions questioning the sufficiency or measurability of BellSouth's commitment to compliance with the nondiscrimination obligation must also be dismissed. The Commission has readily at hand a number of tools to ensure compliance with the conditions of the *US West Forbearance Order*. Principally, the Commission has its Section 208 complaint process. Where this process may have at one time been fraught with administrative delays making it cumbersome for parties and the Commission alike, the Commission has recently taken a number of steps to

¹⁰ Whether there are other, independent bases for BellSouth to be held to performance of the conditions in the absence of forbearance is a matter beyond the scope of this forbearance Petition. For example, the Commission has held that non-carrier directory assistance providers are not entitled to listing data under Section 251(b)(3) and has only recently begun consideration of whether they have any such rights under Section 201(b) or 202(a). *Provision of Directory Listing Information Under the Telecommunications Act of 1934*, CC Docket No. 99-273, *Notice of Proposed Rulemaking*, FCC 99-227 (released September 9, 1999). To date, the Commission has not recognized any right of non-carrier directory assistance providers to have access to directory listing data outside the context of either Section 272(c) or of forbearance incorporating Section 272(c) or other nondiscrimination conditions. There is no need, however, for the Commission to delay consideration of BellSouth's forbearance Petition while it considers this issue in the broader context of the rulemaking.

improve the viability of complaints as an enforcement tool.¹¹ Further, audits of BellSouth's cost allocation manual by independent auditors and the opportunity for staff audits by the Commission will ensure that BellSouth properly accounts for imputed charges for listing information. Accordingly, no further proof of compliance is required.

Teltrust claims that it needs more information to ensure that it has "critical access to DA data of the BOCs at the same rates, terms, and conditions they impute to themselves."¹² BellSouth satisfies this need by providing and imputing to itself the same rates, terms, and conditions offered to unaffiliated directory assistance providers through BellSouth's Direct Access to Directory Assistance Service ("DADAS").¹³ To the extent Teltrust and others raise issues about the levels of any such imputed rates, their arguments are beyond the scope of this proceeding. Indeed, even INFONXX concedes that while "parties may disagree about rates," use of a tariff as imputed cost provides "concrete evidence that [the carrier is] in fact complying with the Commission's directive to make directory listing information available at imputed costs."¹⁴ BellSouth will utilize these tariffed rates and thus will satisfy the Commission's imputation requirement.

Excell's claims are similarly unfounded. Excell Agent Services has incorrectly suggested that BellSouth uses better or more updated directory assistance listing data than what is available

¹¹ For example, in addition to adopting procedural rules to accommodate accelerated consideration of qualifying disputes, the Commission has also restructured its internal operations and focused more resources on dispute resolution activities.

¹² Teltrust Comments at 13.

¹³ BellSouth Tariff FCC No. 1, Section 9.3. This is a service that allows other directory assistance providers to query the same databases that BellSouth uses for its directory assistance services.

¹⁴ INFONXX at 8-9.

to Excell and other Directory Assistance Database Service (DADS)¹⁵ customers of BellSouth. This statement is simply untrue. Excell gets all the in-region directory assistance listing data to which it is entitled, and the quality of such data and the updates thereto are identical to that which BellSouth uses itself to provide its directory assistance services to its customers.

CONCLUSION

For the foregoing reasons, the Commission should reject the oppositions to BellSouth's Petition and promptly grant to BellSouth the same forbearance relief previously granted to US West.

Respectfully submitted,
BELLSOUTH CORPORATION

By:


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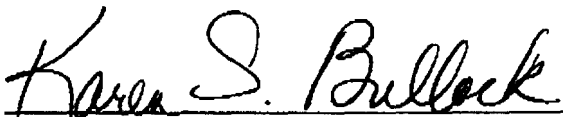
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DATE: December 8, 1999

¹⁵ This service provides subscribers the option of obtaining their own copy of BellSouth's directory assistance database.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 8th day of December 1999 served the following parties to this action with a copy of the foregoing BellSouth Response to Oppositions by hand delivery or by placing a true and correct copy of the same by U.S. mail, addressed to the parties listed on the attached service list.



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